

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

Filed: December 14, 2017

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KENNETH H. BARRETT *and* TAMMY  
BARRETT, *parents and representatives of*  
J.H.B., *deceased*,

Petitioners,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

\* \* \* \* \*

UNPUBLISHED

No. 14-137V

Special Master Gowen

Decision on Damages; Diphtheria-  
Tetanus-Acellular Pertussis (“DTaP”);  
Hepatitis B (“Hep B”), Inactivated  
Polio (“IPV”) Haemophilus Influenzae  
Type B (“Hib”), Pneumococcal  
Conjugate (“Prevnar”), and Rotavirus  
Vaccines; Pneumonia; Death.

Peter J. Sarda, Creech Law Firm, Raleigh, NC, for petitioners.

Robert P. Coleman, III, United States Department of Justice, Washington, DC, for respondent.

### **DECISION ON DAMAGES<sup>1</sup>**

On February 18, 2014, Kenneth H. Barrett and Tammy Barrett (“petitioners”) filed a petition under the National Vaccine Injury Compensation Program (“Vaccine Act” or the “Program”),<sup>2</sup> on behalf of their deceased infant son, J.H.B. Petitioners alleged that as a result of receiving numerous childhood vaccines on August 28, 2013, J.H.B. died from pneumonia on August 31, 2013. Petition

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<sup>1</sup> Pursuant to the E-Government Act of 2002, *see* 44 U.S.C. § 3501 note (2012), **because this decision contains a reasoned explanation for the action in this case, I intend to post it on the website of the United States Court of Federal Claims.** The court’s website is at <http://www.uscfc.uscourts.gov>. Before the decision is posted on the court’s website, each party has 14 days to file a motion requesting redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). “An objecting party must provide the court with a proposed redacted version of the decision.” *Id.* **If neither party files a motion for redaction within 14 days of the date this decision is filed, the decision will be posted on the court’s website without any changes.**

<sup>2</sup> The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 to 34 (2012). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C. § 300aa.

at ¶¶ 12-14; Amended Petition at ¶¶ 12-14.<sup>3</sup> On May 6, 2014, respondent filed a Rule 4(c) report recommending against compensation. The parties submitted expert reports, as well as expert testimony during a hearing. On September 6, 2017, I ruled that petitioners had established entitlement to compensation based on a theory of causation in fact. Ruling on Entitlement (ECF No. 55).

On December 13, 2017, respondent filed a Proffer on an award of compensation. (ECF No. 61). The Proffer is attached hereto as Appendix A. Consistent with the terms of the Proffer, I hereby award the following compensation:

- 1) A lump sum payment of \$310,000 (representing compensation for the statutory death benefit (\$250,000) and pain and suffering (\$60,000)) in the form of a check payable jointly to petitioners.**

This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

The Clerk of the Court shall **ENTER JUDGMENT** in accordance with this decision.<sup>4</sup>

**IT IS SO ORDERED.**

**s/ Thomas L. Gowen**

Thomas L. Gowen

Special Master

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<sup>3</sup> Neither the petition nor the amended petition stated which vaccines J.H.B. received on August 28, 2013, or which vaccines they alleged to have caused his death. The medical records indicate that on August 28, 2013, J.H.B. received Diphtheria-Tetanus-acellular-Pertussis (“DTaP”), Hepatitis B (“Hep B”), Inactivated Polio (“IPV”), Haemophilus Influenza Type B (“Hib”), Pneumococcal Conjugate (“Prevnar”), and Rotavirus vaccinations. Exhibit 4 at 2.

<sup>4</sup> The entry of judgment is expedited by the parties jointly or separately filing notice renouncing their right to seek review.



**II. Items of Compensation**

**A. Statutory Death Benefit**

Respondent proffers that petitioners should be awarded \$250,000.00 pursuant to the death benefit provided for in the Vaccine Act. Petitioners agree.

**B. Pain and Suffering**

Respondent proffers that petitioners should be awarded \$60,000.00 in actual pain and suffering. Petitioners agree.

**III. Form of the Award**

Respondent recommends that the compensation provided to petitioners should be made through a lump sum payment as described below, and requests that the Special Master's decision and the Court's judgment award the following:

A lump sum payment of \$310,000.00, representing compensation for the statutory death benefit (\$250,000.00) and pain and suffering (\$60,000.00), in the form of a check payable jointly to petitioners.

Respectfully submitted,

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